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TERRITORIAL LAWS

PASSED FROM 1809-18

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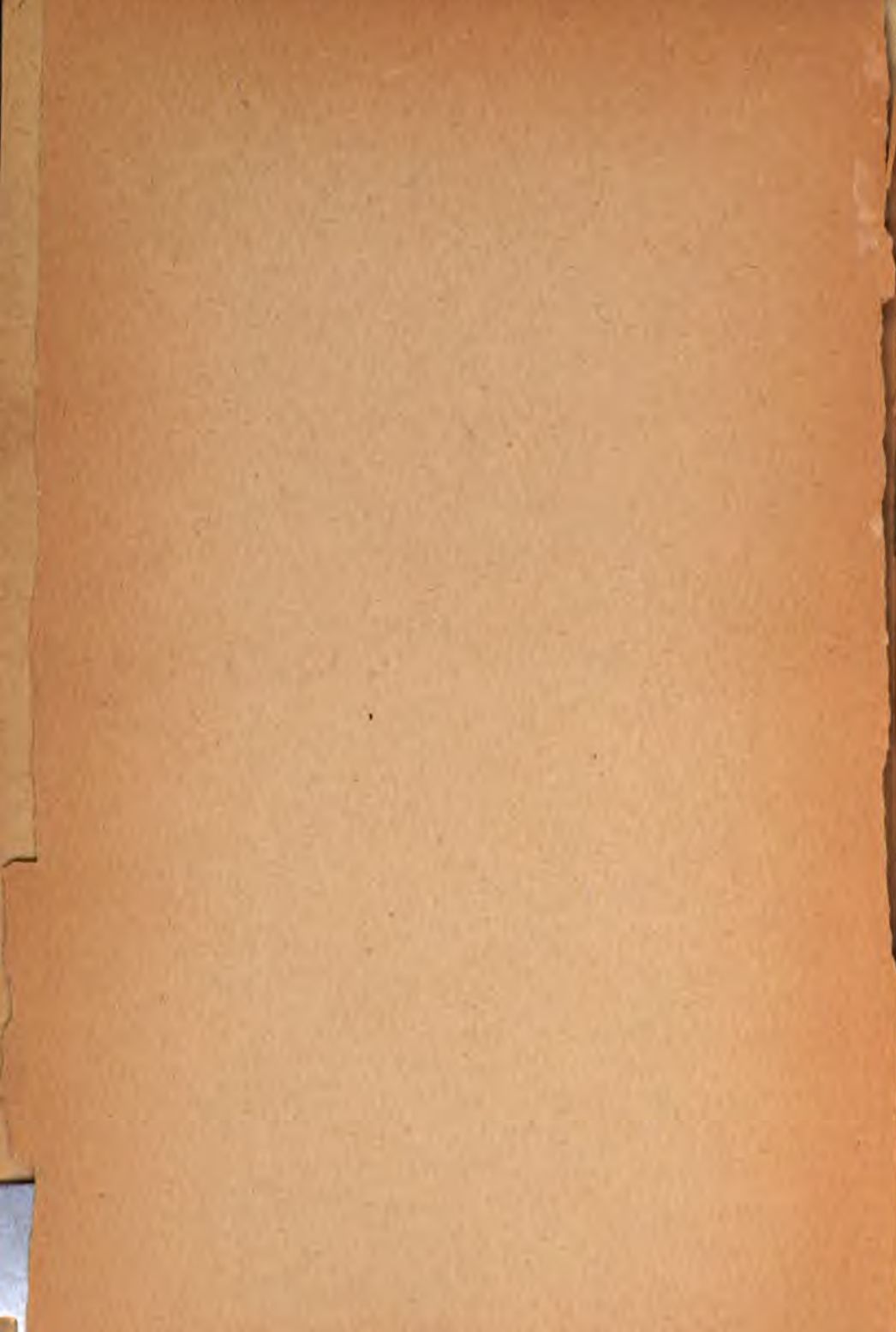
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NUMBER II.

INFORMATION RELATING TO THE

Territorial Laws of Illinois

PASSED FROM 1809-1812.

PREPARED BY
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Professor in the University at Chicago.

Final.

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BRIEF HISTORY OF THE TERRITORIAL LAWS OF ILLINOIS PASSED FROM 1809 TO 1812.

By Edmund J. James, Professor in the University of Chicago.

In the ordinance of 1787, re-enacted by Congress August 7, 1789, it was provided that the territory northwest of the Ohio, of which the present State of Illinois formed a part, should be organized into a single district under one government, although provision was made for dividing it subsequently if Congress chose to do so. It was further provided that after the free male population of the territory should amount to five thousand souls, a territorial legislature might be established. Until such time the power of passing laws for the new territory was entrusted to the governor and judges of the territory appointed by Congress, or (after 1789) by the President.

The act conferring this authority provided that this board, consisting of the governor and judges, might adopt from the codes of the original states such laws, civil and criminal, as might seem to them necessary and best suited to the circumstances of the district. A question arose immediately as to whether this meant that the power of the board was limited to taking such laws *in toto*, or whether they might alter them to suit the needs of the new territory, or go still further and enact new laws. The board took the ground that it had authority to enact laws *de novo* and acted in accordance with this policy, taking such laws from the codes of Pennsylvania, New York, Virginia, and the other states as they saw fit, and drafting and passing other laws more suited to the needs of the new country. As these laws were not formally disallowed by Congress, they were enforced as valid until the meeting of the first territorial legislature when they were passed upon by it, most of them being re-enacted.* A law of Congress dated May 8, 1792, permitted the board of governor and judges to repeal the laws previously made by them whenever they might be found to be improper. The House of Representatives passed May 24, 1794, a resolution disallowing the acts of the governor and judges of 1792, but nothing came of it. Later a joint resolution declaring these acts void was read twice and committed, but no further action was taken.†

The first legislative assembly of the northwest territory met September 16, 1799, (although a quorum did not appear until September

* Compare Hinsdale, *Old Northwest*, page 298.

† Compare Howard, *Local Constitutional History of the United States*, Baltimore, 1899, page 409.

24th) with full power to adopt or change the laws passed by the board of governor and judges, and to make such laws as it saw fit under the general supervision and control of Congress.*

When the Indiana territory was cut off from the Northwest territory by the act of May 7, 1800, which was to go into effect July 4, 1800, a similar provision in regard to legislation was made in the case of this territory, and the board of governor and judges constituted the only legislative authority from July 4, 1800, until the meeting of the first territorial legislature of Indiana July 9, 1805.†

When the territory of Illinois was set off from the territory of Indiana by the act of February 3, 1809, which was to go into effect March 1, 1809, a similar provision was made in regard its governor and judges, and for more than three years and a half the board of governor and judges constituted the sole legislative authority under Congress in the territory up to the meeting of the first territorial legislature, November 25, 1812.

The law provided that authentic copies of the laws passed by the board of governor and judges should be sent every six months by the territorial secretary to the president of the United States at Washington, for permanent preservation. The originals of these laws were supposed to be filed with the territorial secretary, and were intended to constitute a part of the public archives of the territory.

For some reason or other, these laws, if they were ever sent to Washington, were not preserved, with the exception of four now on file, mentioned below, nor were they printed so far as known in any document of the federal government.

In a communication to the writer from the second assistant secretary of state, Mr. Alvey A. Adee, dated October 30, 1897, it is stated that no record can be found in the archives of the index bureau of the printing of these Illinois territorial laws, nor are they among the bound volumes containing the early laws of the various territories. A package of loose manuscripts, however, containing four laws passed in the territory of Illinois, was found in the index bureau. The package was dated 1811, and it is stated in an enclosed report from the governor that these were the only laws passed during that year. These laws, according to Mr. Adee, are as follows:

1. A law concerning the militia, adopted from the militia law of South Carolina.
2. A law concerning the militia, adopted from the Kentucky code.
3. A law altering the time of holding the general court at Cahokia in the county of St. Clair. (The above three laws were passed from March 1, 1811, to August 31, 1811).
4. An act to repeal an act entitled, An act to encourage the killing of wolves. (November 9, 1811).

* The laws of the Northwest territory passed by the board of governor and judges were printed in four volumes: The first contained the laws 1788, 1790, and 1791. Philadelphia, 1792. pp. 70; Francis Childs and John Swayne. The second contained the laws of 1792. Philadelphia, 1794. pp. 76; Francis Childs and John Swayne. The third contained the laws of 1795 (Maxwell's Code). Cincinnati, 1796. pp. 225. W. Maxwell. The fourth contained the laws of 1798. Cincinnati, 1798. pp. 32, Edmund Freeman.

† The actual period of law making extended from January 12, 1801, to September 22, 1804.

The originals of these laws seem to have completely disappeared, and with the exception of the copies of the laws mentioned above on file in the index bureau of the state department at Washington, no copies are known to be in existence. There is no record that these laws were ever printed in the territory. In the first volume of the territorial laws to be found in the State historical library at Springfield, there is a written statement, probably by Judge Gross, of Springfield, that copies of these laws are on file in the office of the Secretary of State at Springfield. In Starr and Curtiss' annotated statutes of Illinois, volume 1, Introduction, it is also stated that the manuscripts are on file in the State Department at Springfield. This statement seems also to have been made upon authority of Judge Gross.

A careful examination of the documents on file in the Secretary of State's office shows no trace of such originals, or of any copies ever having been in the office, and no one connected with the office has any recollection of ever having seen them. The chief of the index department in the Secretary of State's office, Mr. S. L. Spear, has been kind enough to make a thorough examination of all the old records in the office, but has not succeeded in unearthing any of these laws. In a letter to the writer dated October 25th, 1897, he states that Judge Gross assured him that he had seen the originals in the Secretary of State's office some time, he thinks, during George H. Harlow's term of office.

There is, however, in the office of the Secretary of State an Executive Register containing a list of the important acts of the government from the beginning of the territory. This register was kept by the Secretary of State and in it are entered the titles of certain laws and the date of their passage. Mr. Spear has been kind enough to make a careful copy of all the entries in this Executive Register from April 25th, 1809, to November 29th, 1811. This list is printed below.

The dates prefixed to the entries seem to be the dates of the filing of the laws with the Secretary of State, for in some instances the entry gives the date of the passage of the law. Thus the laws dated January 24th, 1811, were probably all passed during the year 1810, since the statement of the governor filed with the copies of the four laws at Washington, is to the effect that those four were the only ones passed by the governor and judges during the year 1811 and none of them are included under the date of January 24th, 1811. It will be noticed also that the other dates in the Executive Register at Springfield do not exactly correspond to the dates affixed to the laws on file in the department at Washington.

As a matter of history, it would be of interest to find, if possible, the copies of these original laws; as it is now, it is impossible to make a complete collection of the laws of Illinois from the establishment of the Northwest Territory to the present time, since the laws passed from the 25th day of April, 1809, to the meeting of the first territorial legislature, with the exception of those copies on file in Washington, have completely disappeared. The following list, however, contains the titles of all the laws mentioned in the Executive

Register of the Territory. It will be noticed that in some instances it is stated that a given law was adopted from the code of some other state. In other instances no such fact is stated.

It is interesting to note that the first printed edition of Illinois Territorial Laws was issued at Russelville, Kentucky, in 1813. It was printed by Matthew Duncan and contains the acts passed by the Legislative Council and House of Representatives at their first two meetings held at Kaskaskia in the year 1812. The first act is dated December 12, 1812; the last, December 26, 1812. The pamphlet contains 60 pages.

APPENDIX A.

LIST OF LAWS PASSED BY THE GOVERNOR AND JUDGES OF THE ILLINOIS TERRITORY.

TITLES COMPILED FROM THE "EXECUTIVE REGISTER FOR THE ILLINOIS TERRITORY, COMMENCING THE 25TH DAY OF APRIL 1809."

By S. L. Spear, Chief of the Index Department, Secretary of State's Office, Springfield,
Illinois.

1809.

JUNE 10.

A resolution, "Respecting the laws of the Indian Territory," signed by the Governor and two judges and filed with the Secretary of State.

JUNE 16.

An act repealing certain laws and parts of laws.

An act concerning the courts of common pleas.

An act to regulate the time of holding the general court.

JUNE 19.

An act in addition to an act repealing certain laws and parts of laws.

JULY 20.

A law to alter and repeal certain parts of an act entitled "A law to regulate county levies;" also to alter and amend the said law entitled "(A law) to regulate county levies," and to enforce the collection of county levies for the year 1809.

An act concerning county courts.

An act concerning the general court.

A law respecting arrearages due the former sheriff of Randolph county, as also fees due him.

JULY 21.

A law to prevent fraud and perjuries (adopted from the Kentucky Code).

An act appropriating fines, amercements, penalties, forfeitures and taxes imposed on law processes to the use of the Territorial Government.

An act concerning fees in the general court.

JULY 22.

An act to authorize the guarding of county jails.

DECEMBER 22.

A law entitled, "A law giving the sheriff of the county of Randolph further time to make out and deliver a list of persons and property liable to taxation in the said county, for the year 1809, and to give him further time for the collection thereof."

1810.

JANUARY 31.

An act concerning the clerks of county courts, bearing date the 26th January, 1810.

An act concerning appeals from the judgment of justices of the peace to the county courts, bearing date the 26th January, 1810; adopted from the Kentucky Code.

An act repealing part of a law entitled, "A law for the prevention of vice and immorality," bearing date 26th January, 1810.

An act entitled, "An act concerning fornication and adultery," bearing date January 26, 1810; adopted from the Georgia Code.

MARCH 7.

An act regulating the manner of taking depositions, dated February 26, 1810; adopted from the Georgia Code.

An act prescribing the duty of sheriffs in a certain case, dated February 26, 1810; adopted from the Georgia Code.

An act to repeal part of an act of the General Assembly of the Indiana Territory, passed the 17th day of September, 1807, entitled, "An act respecting crime and punishment." Dated 27, February, 1810.

An act repealing part of an act entitled, "An act concerning appeals from the judgments of justices of the peace to the county courts." Dated February 27, 1810.

A law concerning grand jurors. Dated March 3, 1810; adopted from the Kentucky code.

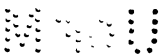
MARCH 11.

An act to prevent unlawful gaming. Dated March 9, 1810; adopted from the Virginia code.

APRIL 7.

An act entitled; "An act repealing parts of certain acts." Dated March 13, 1810.

An act entitled, "An act to suppress duelling." Dated April 7, 1810; adopted from the Virginia code.



MAY 28.

A law entitled, "A law concerning advertisements." Dated May 21, 1801.

1811.

JANUARY 24.

An act repealing so much of the law of the Territory regulating county levies as imposes a tax on neat cattle.

An act concerning courts of common pleas.

An act concerning occupying claimants of land. Adopted from the Kentucky code.

An act concerning the powers of the governor of the Territory of Illinois. Adopted from the constitution of the State of Pennsylvania.

JUNE 22.

A law entitled, "A law concerning the militia." Adopted from the militia law of South Carolina.

JUNE 26.

A law entitled, "A law concerning the militia." Adopted from the Kentucky code.

AUGUST 8.

A law entitled, "A law altering the time of holding the general court at Cahokia. in the County of St. Clair."

NOVEMBER 29.

An act to repeal an act entitled, "An act to encourage the killing of wolves."

APPENDIX B.

DEPARTMENT OF STATE, WASHINGTON,
October 30, 1897.

*President Edmund J. James, American Academy of Political and Social Science,
Chicago, Illinois.*

SIR:—By direction of the Secretary I have to acknowledge the receipt of your letter to him dated the 23d instant. You therein state that the originals of a series of laws passed by the governor and judges of the territory of Illinois between the years 1809 and 1812, have been lost or misplaced; that for some reason these laws were never printed and that no record of them exists in the State archives except a mention of them by title. As it was the duty of the legislative bodies in the different territories to transmit copies of the laws which they passed to the Secretary of State, you inquire whether the laws to which you refer were ever printed in any federal document or, if not, whether they are on file in this department.

An investigation of the manuscripts in the bureau of rolls and library was at once directed with the result that, under the title of "Papers and Records of the Territories," have been found: 1st, a copy of the "Executive Register (of) Illinois Territory," which under date of March 7, 1812, begins with the items: "The Governor appointed Shadrach Bond, Junr., Aid-de-Camp to the Commander-in-Chief; the Governor appointed Elias Barcroft Lieutenant in the 1st Regiment militia," and ends under date of March 14, 1812, with "A Proclamation," beginning,—

"WHEREAS, it is enacted by the 4th section of a law of Congress, dividing the Indiana territory into two separate governments, etc., etc." 2d. The "Executive Proceedings of the Illinois Territory from September 1st, 1812, to February 28, 1813, inclusive."

As these papers did not seem to be exactly what you desire, and are, moreover of a later date, a careful search was made of the archives of the index bureau of this department. No record can be found on the books of the printing of the laws you mention in any federal document, and it is not thought they were so printed. There are in the index bureau a number of bound volumes containing the early laws of various territories, but none of these volumes contains the laws of Illinois. A package of loose manuscripts containing laws passed in the territory of Illinois was found. Among these the only ones relating to your inquiry, four in number, were dated 1811, and stated in an enclosed report from the Governor to be the only laws passed during the year. These laws are as follows:

1. A law concerning the militia adopted from the militia law of South Carolina.
2. A law concerning the militia adopted from the Kentucky code.
3. A law altering the time of holding the general court at Cahokia, in the county of St. Clair. The above three laws passed from March 1, 1811, to August 31, 1811.
4. An act to repeal an act entitled, "An act to encourage the killing of wolves." (Nov. 9, 1811.)

Regretting that the above information is of so meagre a nature, I am,

Respectfully yours,

ALVEY A. ADEE,
Second Assistant Secretary.

APPENDIX C.

DEPARTMENT OF STATE, WASHINGTON.
December 1, 1897.

Edmund J James, Esq., President American Academy of Political and Social Science, Chicago, Ill.

DEAR SIR:—I send you with this copies of all laws of the Territory of Illinois, passed by the board of governor and judges, now on file in this Department. The manuscripts are very indistinct by reason of age, and original defect in writing, but by great pains we have been able to make for you perfect copies.

Very respectfully yours,

WM. H. MICHAEL,
Chief Clerk.

An act to repeal an act entitled "An act to encourage the killing of wolves."

Be it enacted by the Governor and Judges of the Illinois Territory and it is hereby enacted by the authority of the same, that an act passed by the legislature of the Indiana Territory, bearing date on the fourteenth day of September, in the year eighteen hundred and seven, entitled "An act to encourage the killing of wolves," be and the same is hereby repealed. This act to take effect and be in force from and after the first day of January next.

The foregoing is hereby declared to be a law of the Territory and to take effect accordingly.

In testimony whereof we, Ninian Edwards, Governor, and Alexander Stuart, Jesse B. Thomas and Stanley Griswold, Judges, have hereunto subscribed our names, at Kaskaskia, the ninth day of November, in the year of our Lord eighteen hundred and eleven, and of the Independence of the United States the thirty-sixth.

NINIAN EDWARDS,
ALEX. STUART,
J. B. THOMAS,
STANLEY GRISWOLD,

A true copy of all the laws passed from September 1, 1811, to 29th February, 1812.

NAT POPE,
Secretary.

